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4 Attorneys for Plaintiff

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6  
7 IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION  
8  
9

10 YOLANDA BYRD,

11 Plaintiff,

12 vs.

13 MEGAN J. BRENNAN, POSTMASTER  
14 GENERAL, U.S. POSTAL SERVICE,  
DOES 1 to 10,

15 Defendants.  
16 \_\_\_\_\_ /

Case No.

COMPLAINT FOR VIOLATION OF  
TITLE VII OF THE CIVIL RIGHTS  
ACT OF 1964, AS AMENDED, 42  
U.S.C. §2000e ET SEQ., § 501  
OF THE REHABILITATION ACT OF  
1973, 29 U.S.C. § 791 as  
amended by the REHABILITATION  
ACT AMENDMENTS OF 1992, 29  
U.S.C. § 791(g), 29 CFR  
1614.101(b)

17  
18 DEMAND FOR JURY TRIAL

19 GENERAL ALLEGATIONS

20 Plaintiff, YOLANDA BYRD alleges:

21 1. Plaintiff Yolanda Byrd (hereinafter referred to as  
22 "plaintiff") is an African American adult female. Plaintiff at  
23 all times relevant herein, was suffering from a mental disability  
24 dysthymia, a persistent depressive disorder, that impaired her  
25 ability to concentrate. She could perform the essential duties of  
26 her job, with or without a reasonable accommodation.

1       2. Defendant, Megan J. Brennan, at all times mentioned  
2 herein, except as otherwise alleged herein, is the Postmaster  
3 General of the U.S. Postal Service.

4       3. Plaintiff is employed by the United States Postal  
5 Service. She was assigned to report to work at 1675 - 7<sup>th</sup> Street  
6 Oakland, CA 94615. Her job title is "Transfer Clerk". Her  
7 immediate supervisor is Vernon Tate.

8       4. Plaintiff was hired by the United States Postal Service  
9 (herein referred to as "U.S. Postal Service") on or about March  
10 1, 1986. She has been employed by the U.S. Postal Service  
11 continuously from on or about March 1, 1986, through the present  
12 date.

13       5. Plaintiff is informed and believes and thereon alleges  
14 that at all times alleged herein the U.S. Postal Service is a  
15 corporation, and or quasi governmental agency of the United  
16 States of America, licensed to do business in the state of  
17 California of the United States of America, and doing business in  
18 the state of California, county of Alameda, of the United States  
19 of America.

20       6. Plaintiff was discriminated against because of her race,  
21 sex, while she was working on her job in the work place.

22       7. Plaintiff complained to the U.S. Postal Service about  
23 being discriminated against because of her race, sex.  
24 Thereafter, the U.S. Postal Service took adverse employment  
25 action against plaintiff to retaliate against her because of her  
26 complaints about race discrimination.

8. Plaintiff is informed and believes and thereon alleges that the U.S. Postal Service engaged in unlawful activity and or allowed unlawful activity to occur at the work place, by and through U.S. Postal Service employees. Plaintiff reported the unlawful activity. Thereafter, the U.S. Postal Service took adverse employment action against plaintiff in violation of whistle blower protection laws.

9. Plaintiff does not know the true names and or capacity of those persons named as Does 1 to 10, in the complaint herein. Plaintiff will seek leave of court to designate the names of said defendants when their true names and or capacity is learned by plaintiff.

10. Plaintiff is informed and believes and thereon alleges that the U.S. Postal Service is an employer subject to the laws set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq.; § 501 of The Rehabilitation Act of 1973, 29 U.S.C. § 791 as amended by the Rehabilitation Act Amendments of 1992, 29 U.S.C. § 791(g); 29 CFR 1614.101(b), and whistle blower protection statutes.

## JURISDICTION & VENUE

11. Jurisdiction of this court exists pursuant to 28 U.S.C. Section 1331 because this involves alleged violations of federal laws set forth in Title VII of the Civil Rights Act of 1964 for employment discrimination, as amended, and the Rehabilitation Act. Jurisdiction is conferred on this Court by 42 U.S.C., Section 2000-e-5. Equitable and other Relief is sought under 42

1 U.S.C., Section 2000-e-5(g).

2 12. The unlawful conduct and or employment practices  
3 complained of herein occurred in the city of Oakland, county of  
4 Alameda, state of California.

5 13. At all relevant times, defendant, and each of them,  
6 knew or should have known that the U.S. Postal Service's  
7 supervising employees and or managerial employee(s), were  
8 discriminating against plaintiff because of her race, sex, and or  
9 disability and or retaliating against plaintiff because of her  
10 prior complaints about discrimination and or her prior  
11 participation in EEO protected activities.

12 14. Defendant, despite knowledge and or adequate  
13 opportunity to learn of the misconduct of its agents and or  
14 employees, including but not limited to managerial employees, and  
15 plaintiff's supervisors, retained Vernon Tate, agents and or  
16 employees in its service, and thereafter adopted, approved and  
17 ratified the acts, omissions and misconduct of said defendants.

18 15. At all times alleged herein, defendant, in doing the  
19 acts alleged herein subjected plaintiff to a continuing course of  
20 conduct with the motivation to discriminate against her because  
21 of her race, sex and or to retaliate against her because of her  
22 prior complaints and or her prior discrimination complaints and  
23 or her prior participation in EEO protected activities.

24 Defendant acted with the intent to cause plaintiff to suffer  
25 emotional distress, severe emotional distress, to lose her job,  
26 to lose income and incur expenses, including, but not limited to

27

1 attorney fees and court costs.

2       16. Plaintiff is a person protected by Title VII of the  
3 Civil Rights Act, as amended, The Rehabilitation act and the  
4 other laws referred to herein, in that she was employed by U.S.  
5 Postal Service, she is an African American female. 29 CFR §  
6 1630.2(g) & (m). Plaintiff is also a person within a protected  
7 class because prior to defendant's adverse administrative action  
8 against her, she had made complaints of discrimination to the  
9 U.S. Postal Service and or participated in EEO protected  
10 activities and Vernon Tate and or the U.S. Postal Service, and  
11 each of them, knew of her prior discrimination complaints and or  
12 knew of her prior complaints of and or her prior participation in  
13 EEO protected activities and or activity protected by the  
14 Rehabilitation Act.

15       17. Plaintiff filed a complaint with the U.S. Postal  
16 Service alleging discrimination based on Race (African American),  
17 Sex, (Female), and Retaliation (Prior EEO activity) when: On  
18 September 13, 2014, plaintiff was removed from her assignment at  
19 the Cargo Force facility and instructed to report to the Oakland  
20 Processing and Distribution Center.

21       18. Plaintiff's complaint was processed in accordance with  
22 the applicable Equal Employment Opportunity Commission (EEOC)  
23 regulations, 29 C.F.R. §1614.103 et seq., An investigation was  
24 conducted, and a copy of the investigative report was transmitted  
25 to plaintiff on April 7, 2015. Following the receipt of that  
26 report, plaintiff did not request a hearing before an EEOC

1      Administrative Judge (AKJ) or a final agency decision without a  
2      hearing. As the plaintiff failed to request either a hearing or  
3      a final agency decision without a hearing, the Agency issued a  
4      final decision on June 24, 2015, in accordance with 29 C.F.R.  
5      §1614.110(b).

6            19. At all times relevant to the issue(s) in this  
7      complaint, the plaintiff was employed as a Full-Time Transfer  
8      Clerks at the Oakland P&DC. Maryvel M. Gonzales, Manager,  
9      Distribution Operations, Oakland, P&DC, Race, (Filipino), Sex  
10     (Female), intentionally discriminated against her because of her  
11     race (African American), Sec (Female), and Retaliation (Prior EEO  
12     activity) when: On September 13, 2014, plaintiff was removed  
13     from her assignment at the Cargo Force facility and instructed to  
14     report to the Oakland Processing Distribution Center (Oakland  
15     P&DC).

16            20. Plaintiff's prior EEO activity is case number 1F-946-  
17     0038-14, which Ms. Gonzales became aware of when she received  
18     plaintiff's affidavit on August 8, 2014.

19            21. Ma. Gonzales removed plaintiff from her assignment,  
20     which she was rightfully awarded based on her qualifications and  
21     seniority. Plaintiff alleges that Ms. Gonzales informed her she  
22     could not report to the Cargo Force facility due to an ongoing  
23     investigation concerning her unacceptable conduct. Plaintiff did  
24     not engage in misconduct and the allegations made against her are  
25     not true. The U.S. Postal Service's stated reason for plaintiff's  
26     job reassignment is a pretext.

1       22. As a result of the reassignment, plaintiff is  
2 performing job duties of a General Expediter, not a Transfer  
3 Clerk, however, her hours and pay have not changed and or  
4 increased.

5 Plaintiff filed a grievance.

6       23. Plaintiff filed prior EEO complaints, including Case  
7 Number 1F-946-0038-14.

8       24. At the time plaintiff was reassigned the U.S. Postal  
9 Service's custom, policy and past practice was not to reassign  
10 to perform job duties of jobs outside their job category. The  
11 U.S. Postal Service did not reassign other similar situated  
12 employees to work on job assignments outside of their job  
13 category, without increasing the employee's pay to the  
14 appropriate pay grade.

15       25. The U.S. Postal Service failed to take all reasonable  
16 steps to stop and or prevent discrimination and or retaliation  
17 against plaintiff from occurring.

18       26. Plaintiff exhausted her administrative remedy prior to  
19 filing the lawsuit herein. She filed her formal complaint on  
20 December 26, 2014.

21       27. The U.S. Postal Service issued the "Final Agency  
22 Decision" on June 24, 2015.

23       28. Defendant's conduct proximately caused plaintiff to  
24 suffer emotional distress, grief, worry, anxiety, humiliation,  
25 past and future, loss of standing in the work place community,  
26 loss of income, and to incur attorney fees. Plaintiff's claim  
27

1 for emotional distress damages is \$500,000.00. Her claim for  
2 punitive damages is \$500,000.00. Her claim for attorney fees is  
3 estimated to be \$150,000.00. The true amount of plaintiff's  
4 emotional distress damages, punitive damages and attorney fees  
5 will be proven at trial.

6 29. Plaintiff hereby demands a jury trial.

7 **FIRST CAUSE OF ACTION**  
8 **DISCRIMINATION BASED ON RACE, SEX**  
9 **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS**  
**ACT OF 1964, AS AMENDED, AND THE**  
**REHABILITATION ACT**

10 30. Plaintiff realleges and incorporates by reference  
11 Paragraphs 1 through 29 of the Complaint as though fully set  
12 forth at length herein.

13 31. Defendant, in doing the acts alleged herein  
14 discriminated against plaintiff based on plaintiff's race and or  
15 sex and or disability and or plaintiff's complaint about safety  
16 concerns on the job. Plaintiff complained to the Chris  
17 Stallworth, supervisor of Cargo Force, about the lack of drinking  
18 cups to use for drinking water on the job, about one week before  
19 her job reassignment. Chris Stallworth complained to the U.S.  
20 Postal Service about the issue raised by plaintiff. On September  
21 12, 2014, plaintiff received a just cause interview by the U.S.  
22 Postal Service regarding her complaint about the lack of water  
23 cups to use for drinking water on the job. The next day she  
24 received a unilateral job reassignment, outside of her job  
25 category, against her will. Defendant's conduct alleged herein  
26 violated Title VII of the Civil Rights At of 1964, as amended,

1 and violated the Rehabilitation Act.

2 32. Defendant by engaging in conduct including but not  
3 limited to the acts alleged herein engaged in continuing course  
4 of conduct designed to harass plaintiff and or retaliate against  
5 her for her complaints about discrimination, and or unlawful  
6 activities and or prohibited personnel practices, and other  
7 violations of her constitutional and civil rights.

8 33. In doing each and all of the acts alleged herein, said  
9 defendants, violated Title VII of the 1964 Civil Rights Act as  
10 amended, and violated the Rehabilitation Act.

11 34. Defendant's conduct and or the conduct of each  
12 defendant, alleged herein proximately cause plaintiff to lose  
13 income, suffer emotional distress, mental anguish, anxiety and  
14 worry, and incur attorney fees, and is reasonably certain to  
15 proximately cause plaintiff to suffer emotional distress and  
16 incur attorney fees in the future all to plaintiff's damage in an  
17 amount to be shown according to proof at trial.

18 35. The conduct of defendants, and each of them, alleged  
19 herein was willful, wanton, malicious, and oppressive, in that  
20 defendant knew that its conduct was unreasonable and or illegal.  
21 Furthermore, defendant's acts were carried out in willful and  
22 conscious disregard of plaintiff's rights and well-being such as  
23 to constitute malicious, despicable conduct within the meaning of  
24 California Civil Code §3294, entitling plaintiff to punitive  
25 damages in an amount appropriate to punish or make an example of  
26 defendant.

SECOND CAUSE OF ACTION  
RETALIATION FOR PRIOR DISCRIMINATION  
COMPLAINTS/COMPLAINTS ABOUT FAILURE TO  
REASONABLY ACCOMMODATE HER DISABILITY AND OR  
PARTICIPATION IN EEO PROTECTED ACTIVITIES IN  
VIOLATION OF TITLE VII AND THE  
REHABILITATION ACT

36. Plaintiff realleges and incorporates by reference Paragraphs 1 through 35 of the Complaint as though fully set forth at length herein.

37. Prior to plaintiff being reassigned to another job plaintiff filed various EEO Complaints and grievances for disparate treatment, against the U.S. Postal Service.

38. Defendants, and each of the, in doing the acts alleged herein and by failing to act, as alleged herein, violated Title VII and violated the Rehabilitation Act by retaliating against plaintiff because of plaintiff's prior complaints about discrimination based on race and or sex or her participation in EEO protected activity.

39. Defendant's conduct proximately caused plaintiff to suffer general and special damages, emotional distress and incur court costs and attorney fees in an amount to be proven at trial.

## PRAYER

WHEREFORE, Plaintiff prays for judgement against all Defendants, and each of them as follows:

1. Compensatory and special damages, including damages for mental and emotional distress, in an amount to be determined at the time of trial, estimated at \$500,000.00;

## 2. Loss of income;

1       3. Punitive and exemplary damages in an amount appropriate  
2 to punish and/or make an example of the Defendants sued  
3 individually herein to be determined at trial, estimated at  
4 \$500,000.00;

5       4. Reasonable attorney fees, estimated at \$150,000.00;

6       5. Costs of suit incurred herein, estimated at \$3,000.00;

7       6. Prejudgment interest at the legal rate on the amount of  
8 Plaintiff's lost wages and employment benefits; and

9       7. Such other and further relief as the Court deems just  
10 and proper.

11 Dated: September 22, 2015

LAW OFFICES OF MICHAEL C. COHEN

12 By:

13   
Michael C. Cohen,  
14 Attorney for Plaintiff